

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PHILIP GORDON, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

BLUETRITON BRANDS, INC., (f/k/a
NESTLE WATERS NORTH AMERICA,
INC.),

Defendant.

22 CV 2138 (JMF)

**DECLARATION OF JOSEF NUSSBAUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

I, Josef Nussbaum, under penalty of perjury, affirm as follows:

1. My name is Josef Nussbaum, and I am partner with Joseph & Kirschenbaum LLP (“JK”), Plaintiffs’ counsel in the above-captioned matter. I am familiar with the facts and circumstances set forth herein.
2. Attached hereto as “Exhibit A” is a true and correct copy of the September 29, 2022 deposition of Defendant BlueTriton Brands Inc.’s Fed. R. Civ. P. Rule 30(b)(6) witness Nancy Sotomayor.
3. Attached hereto as “Exhibit B” are true and correct copy of excerpts from Defendant’s document production in this case, reflecting a list of ReadyRefresh Service Representatives including their employee numbers, names, locations, positions, start and end date with the organization, bates stamped D000065-D000095.
4. Attached hereto as “Exhibit C” is a true and correct copy of an excerpt from Defendant’s document production in this case, reflecting a job posting for “Job Title: Route Delivery Driver Non CDL,” bates stamped D000001.

5. Attached hereto as "Exhibit D" is a true and correct copy of an excerpt from Defendant's document production in this case, reflecting a job posting for "Job Title: Route Delivery Driver CDL," bates stamped D000002.

6. Attached hereto as "Exhibit E" is a true and correct copy of excerpts from Defendant's document production in this case, reflecting a job posting for "Direct Store Delivery Sales Rep," bates stamped D000003- D000004.

7. Attached hereto as "Exhibit F" is a proposed Notice of this class action to the Class Members.

8. JK is a law firm dealing almost exclusively with employee rights. Specifically, the firm represents employees in wage/hour and employment discrimination matters.

9. I graduated from McGill University's Faculty of Law in 2009 and joined JK in 2011. In January 2020, I was named a partner of the firm.

10. The majority of my personal current docket involved class and collective action lawsuits against New York employers for wage and hour violations.

11. D. Maimon Kirschenbaum manages the firm's food service wage and hour department.

12. Since graduating from Fordham University School of Law in 2005, Mr. Kirschenbaum has worked at JK. As a result of his accomplishments representing food service workers throughout New York City, detailed below, he became member/partner of the firm in May of 2007.

13. Over 90% of Mr. Kirschenbaum's personal current docket involves class and collective action lawsuits against New York City restaurants for wage and hour violations.

14. Over the last approximately fifteen years JK has been appointed lead or co-lead class counsel (or counsel for representative plaintiffs in FLSA collective actions) in actions in federal and state courts. *E.g., Spicer v. Pier Sixty LLC*, 2012 U.S. Dist. LEXIS 137409 (S.D.N.Y. Sept. 14, 2012) (granting final approval of settlement in wage and hour class action); *Zivkovic v. Laura Christy LLC*, 329 F.R.D. 61 (S.D.N.Y. 2018) (granting Fed. R. Civ. P. 23 class certification and appointing JK class counsel); *Argudo v. Parea Grp. LLC*, No. 18-CV-0678 (JMF), 2019 U.S. Dist. LEXIS 163249 (S.D.N.Y. Sep. 24, 2019) (same); *Fonseca v. Dircksen & Tallyrand Inc.*, 2015 U.S. Dist. LEXIS 136427 (S.D.N.Y. Sep. 28, 2015) (same); *Murphy v. Lajaunie*, No. 13-cv-6503 (RJS), 2015 U.S. Dist. LEXIS 97531 (S.D.N.Y. July 24, 2015) (same); *Megason v. Starjem Rest. Corp.*, 2014 U.S. Dist. LEXIS 3910 (S.D.N.Y. Jan. 10, 2014) (same); *Schear v. Food Scope Am., Inc.*, 297 F.R.D. 114 (S.D.N.Y. 2014) (same); *Ramirez v. Lovin' Oven Catering Suffolk, Inc.*, 2012 U.S. Dist. LEXIS 25060 (S.D.N.Y. Feb. 24, 2012) (granting final approval of settlement and certification of settlement class in wage and hour class action); *Shahriar v. Smith & Wollensky Rest. Group*, 659 F.3d 234 (2d Cir. 2011) (affirming district court's certification of Rule 23 class of restaurant servers with JK as class counsel); *In re Milos Litig.*, No. 08 Civ. 6666, 2011 U.S. Dist. LEXIS 138473 (S.D.N.Y. Sept. 8, 2011) (granting final approval of settlement in wage and hour class action brought against a restaurant where JK was co-class counsel); *Spicer v. Pier Sixty LLC*, 2010 U.S. Dist. LEXIS 76782 (S.D.N.Y. July 26, 2010) (granting Fed. R. Civ. P. 23 class certification and conditional collective certification pursuant to the FLSA and appointing JK class counsel); *Kato v. Masa NY*, Index No. 09-104578 (S. Ct., N.Y. County Jan. 28, 2010) (certifying class and appointing JK class counsel); *Delaney v. Geisha NYC, LLC*, 261 F.R.D. 55 (S.D.N.Y. 2009) (conditionally certifying FLSA collective action); *Agofonova v. Nobu Corp.*, No. 07 Civ. 6926 (S.D.N.Y. Feb. 6, 2009) (granting final approval of settlement and certification of settlement

class in wage and hour class action); *Williams v. Twenty Ones, Inc.*, No. 07-Civ-3978, 2008 WL 2690734 (S.D.N.Y. June 30, 2008) (conditionally certifying FLSA collective action); *Fasanelli v. Heartland Brewery, Inc.*, 516 F. Supp. 2d 317 (S.D.N.Y. Oct. 5, 2007) (conditionally certifying FLSA collective action).

15. As a result of these lawsuits, we have recovered over \$40 million for thousands of New York City and State restaurant workers. *E.g., Spicer*, 2012 U.S. Dist. LEXIS 137409 (granting final approval of \$8.5 million class action settlement); *Ramirez*, 2012 U.S. Dist. LEXIS 25060 (granting final approval of \$4,750,000 settlement); *Alderman v. 21 Club Inc.*, No. 09 Civ. 2418 (S.D.N.Y. Jan. 27, 2012) (granting final approval of \$2,000,000 settlement).

16. Our work has attracted significant media attention and contributed greatly to a city-wide movement on behalf of food service employees.

17. Our law firm is willing and able to commit the necessary resources to represent the class in this case.

Dated: October 7, 2022
New York, NY

s/ Josef Nussbaum
Josef Nussbaum